

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:

JENNIFER McKINNEY AND  
ISRAEL McKINNEY

Case No. 22-11558  
Chapter 13  
Hon. Rachel M Blise

Debtors.

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**UNITED STATES' MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY AS TO REAL ESTATE**

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The United States of America, on behalf of the Internal Revenue Service (IRS), hereby moves under 11 U.S.C. §§ 362(d) for an order granting IRS relief from the automatic stay as to the property located at W5441 Innsbruck Road, West Salem, Wisconsin (the Property).

**FACTS**

1. On September 27, 2022, Debtors filed for chapter 13 bankruptcy protection. As of this date, Debtors owed IRS \$1,426,365.43 for past tax liability, and the IRS had filed tax liens related to that liability, as evidenced by its proof of claim. Claim 5-1.
2. The Property is subject to IRS's tax lien, and IRS's tax lien is subordinate to the first mortgage of Marine Credit Union (Marine). As of December 23, 2022, the Debtors owed \$312,526.90 to Marine. ECF 77 at 3. The bankruptcy schedules list the Property's value at \$450,000, based on the Debtors' good faith estimate. ECF 34 at 3. The schedules note that the La Crosse County real estate tax bill reflected a lower fair market value of \$404,500. *Id.* Using either estimate, there appears to be substantial equity to which IRS's

lien attaches, potentially ranging anywhere between approximately \$91,000 and \$137,000. *See* ECF 34 at 3, 77 at 3.

3. On December 23, 2022, Marine moved for relief from the automatic stay and abandonment as to the Property, due to the Debtors' failure to make mortgage payments. ECF No. 77. IRS did not oppose that motion but did respond, noting the government's lien interest on the Property, and requesting that the IRS too receive relief from the stay and abandonment should Marine receive the same. ECF 79. The IRS requested this relief so that it could enforce its lien in a counterclaim or request surplus proceeds if Marine commenced foreclosure proceedings. *Id.* at 2.

4. The Debtors and Marine initially resolved Marine's motion via stipulation, provided that the Debtors make payments by a date certain. ECF 109. The Debtors, however, failed to comply with the stipulation's terms, and Marine filed an affidavit of default on March 10, 2023. *Id.* The Court entered an order, granting Marine relief from the automatic stay and abandonment as to the Property, on March 20, 2023. ECF 113.

5. Based on recent conversations the United States' counsel has had with Marine's counsel, Marine intends on pursuing foreclosure of the Property.

### **ARGUMENT**

6. There is "cause" for relief from the automatic stay under § 362(d)(1). The IRS needs relief from the automatic stay to protect and enforce its lien rights. In a judicial foreclosure of real property subject to a federal tax lien, the IRS can seek the appointment of a real estate agent as a receiver to extract full market value from the property (which, if sold in foreclosure, might result in a discounted sale price due to

potential buyers not being interested in purchasing a property subject to IRS's redemption rights). 26 U.S.C. § 7403(d) (receiver to enforce tax lien). The United States frequently uses the receiver procedure for residential real estate worth considerably more than senior encumbrances, such as the case for the Property here.

7. There also are grounds for relief under § 362(d)(2). Given the Debtors' significant tax liability, there is no equity in the Property beyond IRS's tax lien. Nor is the Property necessary to a successful reorganization because it is inevitable that the Debtors will lose their interest in the Property now that Marine has received relief from the automatic stay and abandonment and is going to pursue foreclosure.

WHEREFORE, the United States requests that the Court enter an order granting IRS relief from the automatic stay as to the Property.

Dated this 31st day of March, 2023.

Respectfully Submitted,

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By:

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